CFIST (1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

C.R. No 26 /2004 **Single Bench**

APPLICANT : Jagmen Bai Wd/o Ghuruwa Aged about 50 years, by caste Ghasia, R/o Village Badakapara, Surajpur P.S. & Tah.Surajpur District Sarguja (C.G.)

Claimant

VERSUS

RESPONDENTS :

1. Uma Prasad S/o Jaleshwar Prasad, aged about 38 years, Occupation Driver, R/o At present through owner Ajay Kumar Agrawal, Main Road, Surajpur, District Sarguja (C.G.)
2. Ajay Kumar Agrawal S/o Mahanadram, Aged about 37 years, occupation Business, R/o Main Road Surajpur, P.S. & Tahsil Surajpur, District Sarguja (C.G.)
3. The Oriental Insurance Co. Ltd.Through Branch Manager, Ambikapur, Near State Bank Ambikapur, District Sarguja (C.G.)

P. R. No. 2/6/04 Presented by Shri T.N. Pradhan dated 30.1.04

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE

(Being aggrieved by the order dated 01.01.04 passed by the First Motor Accident Claims Tribunal, Surajpur, District Sarguja in Case No. 0/03)

(15)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CIVIL REVISION NO. 28/2004.

Jagmen Bai Wd/o. Ghuruwa aged about 50 years
r/o. village Badakapara, Surajpur
P.S. & Tah. Surajpur, Dist. Sarguja (CG).

Vs.

Uma Prasad s/o. Jaleshwar Prasad
aged about 38 years and others.

O R D E R

Post for: /08-03-2004

Sd/-
L.C.BHADOO
Judge

9-11-03-2004

A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION NO. 28/2004.

Jagmen Bai Wd/o. Ghuruwa aged about 50 years
r/o. village Badakapara, Surajpur
P.S. & Tah. Surajpur, Dist. Sarguja (CG).
Vs.
Uma Prasad s/o. Jaleshwar Prasad
aged about 38 years and others.

Present:

Shri D.N. Prajapati, counsel for petitioner.

ORDER

(Passed on 10th March, 2004)

As per L.C. Bhadoo, J.

The applicant/claimant - Jagmen Bai has preferred this Civil Revision under Section 115 of the Code of Civil Procedure being aggrieved by the order dated 01/01/2004 passed by the First Motor Accident Claims Tribunal, Surajpur, District Sarguja in Case No.0/2003.

2. The brief facts giving rise to filing of this civil revision are that the husband of the applicant namely Ghuruva , father of the applicant no.2 – Deepak Kumar and son of applicant no.3 Gulbi Bai, was working as a labourer and rickshaw puller of Shining School and he used to take the school children of Shining School from their residence to school and back from school to their residence and for that he was getting Rs.3,000/- per month and for the remaining period he used to work as a rickshaw puller.

3. When at about 8.00 p.m. in the night of 09/03/1999 Ghuruva was on Ambikapur and Bhaikuntpur road in front of Ram temple, he was hit by a Truck bearing no. M.P. 27-B-0847 which was being driven by Uma

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Prasad in a rash and negligent manner, as a result of which Ghuruva fell down, his head was crushed under the wheel of the truck and he succumbed to injuries. Therefore, the claim case was filed by the above-mentioned legal heirs of Ghuruva. The First Motor Accident Claims Tribunal, Surajpur vide its award dated 29/04/2000, awarded the amount of Rs.1,97,200/- in favour of the above claimants and it was ordered that they will be entitled for interest at the rate of 12% per annum on the awarded amount from the date of the claim. It was further ordered that after depositing the awarded amount with interest, the amount should be paid to Jagmen Bai through a account payee check and it was further ordered that Rs.20,000/- be deposited in the name of Deepak Kumar s/o. deceased Ghuruva, Rs.5,000/- be deposited in the name of Gulbi Bai and the remaining amount should be deposited in the name of Jagmen Bai in a nationalized bank for a period of seven years and the said amount will be allowed to be withdrawn after completion of three years with the permission of the Court on the ground of any necessity. But after completion of full tenure of deposit, the permission of the Court will not be required.

4. An application for allowing withdrawal of Rs.15,000/- was filed before the Tribunal on 24/12/2003 on behalf of Jagmen Bai as the same was required for the purpose of marriage of her grand-daughter Sushila which was fixed on 03/01/2004 and it was requested that the amount of Rs.15,000/- may be allowed to be withdrawn out of the deposit of Rs.33,920/-. The learned Tribunal vide its order dated 01/01/2004 rejected the application on the ground that it has not been mentioned in the application that since when the Sushila was residing with the applicant and where the parents of Sushila were residing and merely because the marriage of Sushila has been fixed it cannot be believed that

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Sushila is dependant on applicant and she is residing with applicant. Therefore, applicant is not entitled for withdrawal of the amount. It does not appear that Sushila is being maintained by the applicant, further that she is dependant on the applicant, therefore, the application is rejected.

5. In this connection, Hon'ble Apex Court in the matter of **K.S.R.T. Corporation Vs. Susamma Thomas and others** reported in **A.I.R. 1994 SC 1631** has laid down the guidelines regarding the deposit of the amount of the accidents claim as well as release of the same after reiterating and approving the guidelines issued in the matter of **Muljibhai Ajarambhai Harijan Vs United India Insurance Co. Ltd.** Reported in **1982 (1) 23 Gujrat LR 756** which is relevant is reproduced as under:

> "(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may however be allowed to be withdrawn;
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> (ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting ;purchase of any movable or immovable property, such as, agricultural implements, rickshaw etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent or the purpose and the demand is not a rouge to withdraw money;
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> (iii) In case of semi-literate persons the Tribunal al should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for

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purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;

(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment is long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated.

These guidelines should be borne in mind by the Tribunals in the cases of compensation in accident cases."

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The same are followed by High Court of Kerala in the matter of **Gopalkrishnan Nair Vs. The Motor Accidents Claims Tribunal, Thiruvananthapuram and another,** reported in **A.I.R. 2003 Kerala 255.**

6. If we look in the above guidelines, the Hon'ble Apex Court issued the guidelines in order to safeguard the "feed from being flittered away by the beneficiary due to ignorance, illiteracy or susceptibility to exploitation;" even as per the above guidelines, long term fixed deposit of compensation is mandatory only in the case of minors, illiterate claimants and widows. In case of illiterate claimants the Tribunal is allowed to consider the request for lump sum payment for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw etc., to earn a living. However, in such cases, the Tribunal is required to make sure that the amount actually spent for the purpose and the demand is not a rouge to withdraw money. In case of semi-illiterate claimants, the Tribunal should ordinarily invest the amount of compensation in long term fixed deposit, but if the Tribunal is satisfied for request to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid. In the case of literate persons, it is not mandatory to invest the amount of compensation in long term fixed deposit. The expression used in guideline no (iv) is that in the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above whereas in guideline nos. (i), (ii), (iii) and (v), the expression is used that in the case of literate persons also the Tribunal may resort to

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the procedure indicated in (i) only if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal thinks that in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded. It is necessary to invest the amount in long term fixed deposit. Therefore, a sufficient discretion has been given to the Tribunal not to insist on investment of compensation amount in long term deposit and to release even the whole amount in the case of literate persons. However, unfortunately the Motor Accidents Claims Tribunals are often taking a very rigid stand and are mechanically ordering in almost all cases that the amount of compensation shall be invested in long term fixed deposits. They are taking such a rigid and mechanical approach without understanding and appreciating the distinction drawn by the Apex Court in the case of minors, illiterate claimants and widows and in the case of semi-illiterate persons and literate persons. The Tribunals are invariably following the rigid formula by not allowing the withdrawal of the amount even in case where there is no possibility or chance of the "feed being flittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation", the investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a mater of routine, totally ignoring the spirit of the directions given by the Supreme Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit even without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, where the Tribunal thinks it necessary to direct such

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investment in the larger interest of the claimant and with a view to ensure the safety of the compensation amount. In effect and practice the exception has been made general. The Tribunals are disposing of the applications of the claimants for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind to the spirit and content of the guidelines issued by the Apex Court and that this has resulted in serious injustice and hardship to the claimants. The Tribunals appear to be inhibited by a wrong impression that in view of the guidelines given by the Apex Court, in every case the amount of compensation should be directed to be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimants even if it is required by him. Therefore, it is the high time that the Tribunals are required to make a change in the attitude and approach in the interest of justice.

7. The above guidelines issued by the Hon'ble Apex Court in the larger interest and to safeguard the interest of the claimants in order to safeguard the feed from being flittered away by the beneficiary due to ignorance, illiteracy or susceptibility to exploitation. Therefore, as and when application is filed by the claimants for withdrawal of the amount the Tribunals should always see and ensure that if the claimant is asking for withdrawal of the amount on account of family need to meet urgent requirements such as medical expenses for treatment and other expenses which are to be incurred by the claimant to meet difficult situation. If the amount is being asked for investment for the betterment of the family such as investment in business, for purchase of some property and other things, in the circumstances, the Tribunals are required to consider such application with a pragmatic approach

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and with broader approach and not to decide the applications with a close mind and in a mechanical manner. They are required to see that amount is being withdrawn for genuine need at the same time to see that the amount is spent for the purpose for which the amount is being withdrawn.

8. In the light of the above guidelines, if we look into the case of the present applicant, she made an application before the Tribunal for permitting her to withdraw Rs.15,000/- out of Rs.33,920/- for the purpose of the marriage of her grand-daughter Sushila. The impugned order itself shows that the learned Tribunal rejected the application without giving an opportunity to the claimant to prove the fact that her granddaughter Sushila was residing with her and as a grand-mother she was required to incur the expenses in the marriage of her grand-daughter. In the Hindu families the grandmother is also required to incur expenses in the marriage of grandchild irrespective of the expenses incurred by the parents. As per the material available on record, if the Tribunal was not satisfied then the Tribunal ought to have given the opportunity to the applicant to show that the amount which is being asked for is really needed for the purpose of the marriage of the grand-daughter. Therefore, the impugned order cannot be sustained, as the learned Tribunal has committed illegality in rejecting the application of the applicant.

9. The impugned order is set aside and the learned Tribunal is directed to consider the application afresh and pass an appropriate order in the matter.

Sd/-
L.C.BHADOO
Judge

/6th/03/2004

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